IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5516 OF 2006

Narendra Mohanrao Patil .. Petitioner.

V/s.

The State of Maharashtra & Others .. Respondents.

Mr.Suresh M. Sabrad for the petitioner.

Mr.A.A. Kumbhakoni, Associate Advocate General with Mr.M.H. Solkar, A.G.P. for respondent Nos.1 and 2.

Mr.R.D. Suryavanshi for respondent Nos.3 and 4.

CORAM : J.P. DEVADHAR, J.

DATED : 11TH JULY, 2007.

P.C. :

1. This petition is filed to challenge the order dated 26th July, 2006 passed by the learned Civil Judge, Senior Division, Satara.

2. Pursuant to the tenders invited by respondent No.1 for excavation of sand during the period from 13th March, 2006 to 31st July, 2006, the petitioner had filled in the tender and paid a sum of Rs.4,01,000/-. The auction was held on 13th March, 2006 wherein the petitioner was declared to be the highest bidder. On the same day i.e. 13th March, 2006 in a suit bearing Regular Civil Suit No.107 of 2006 filed by respondent Nos.3 and 4, the Civil

Judge, Senior Division, Satara passed an order staying auction. As a result whereof further proceedings to finalise the auction sale could not take place.

3. Challenging the stay order dated 13th March, 2006, the respondent No.1 filed an Appeal bearing Miscellaneous Civil Appeal No.45 of 2006 before learned District Judge, Satara. The said appeal was however, dismissed by the learned District Judge, Satara on 27th April, 2006.

4. In the disposed off appeal, the petitioner made an application on 7th July, 2006 seeking an order that the petitioner be permitted to deposit the balance tender amount and the petitioner be permitted to excavate the sand upto 30th March, 2006 or till such extended period as deemed fit. By the impugned order dated 26th July, 2006, the learned Civil Judge, Senior Division, Satara rejected the said application. Challenging the said order present petition is filed.

5. Mr.Sabrad, learned Advocate for the petitioner submitted that in the present case the petitioner had furnished demand draft of Rs.4,01,000/- on 13th March, 2006 and the petitioner

was not allowed to excavate the sand for no fault of the petitioner. He submits that the petitioner being the highest bidder is entitled to excavate the sand and the lower Court ought to have allowed the application. In the alternative, learned Advocate for the petitioner submits that the sum of Rs,4,01,000/- deposited by the petitioner be refunded to the petitioner with 9% interest.

6. Mr.Kumbhakoni, learned Associate Advocate General submitted that in the present case the demand draft for Rs.4,01,000/- submitted by the petitioner was not encashed in view of the stay granted by the learned Civil Judge, Senior Division, Satara in Regular Civil Suit No.107 of 2006. He further submits that though the respondent No.1 has challenged the stay order, the appeal filed by the respondent No.1 has been dismissed by the learned District Judge, Satara on 27th April, 2006. Therefore, no fault can be found with the respondent No.1. As regards refund of Rs.4,01,000/- is concerned, Mr.Kumbhakoni submits that the same is not the subject matter of the present petition. Accordingly, he submits that the petition is liable to be dismissed.

7. In the present case, admittedly auction

proceedings were stayed by the learned Civil Judge, Senior Division, Satara on 13th March, 2006 and the said stay order continues to be in force till date. As a result whereof, there is no question of awarding tender in favour of the petitioner. In this view of the matter, no fault can be found with the order passed by the learned District Judge in rejecting the application of the petitioner. As regards the claim for refund of Rs.4,01,000/- with interest is concerned, it is open to the petitioner to apply to the concerned authority.

8. Accordingly, the writ petition is dismissed with no order as to costs.

(J.P. DEVADHAR, J.)